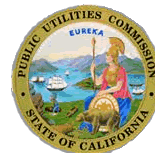


**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

01/25/19
03:09 PM

Application of PACIFIC GAS AND ELECTRIC COMPANY to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others in respect of the issuance of Debt Securities, the total aggregate principal amount of such long-term indebtedness and guarantees not to exceed \$6.1 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, cumulative Preferred Stock -- \$25 Par Value, Preferred Stock -- \$100 Par Value, Preference Stock or any combination thereof; to utilize various debt enhancement features; and enter into interest rate hedges. (U39M)

Application 18-11-001
(Filed November 1, 2018)

**COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION GRANTING EXEMPTIONS
FROM PUBLIC UTILITIES CODE SECTIONS 817, 818, AND 851
TO ENABLE DEBTOR-IN-POSSESSION FINANCING**

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January 25, 2019

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On January 24, 2019, the Commission issued the Proposed Decision of Commissioner Picker (Proposed Decision). Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, and the accelerated procedural schedule adopted for this matter, The Utility Reform Network (TURN) submits these opening comments on the Proposed Decision.¹

I. In Light Of The CALFIRE Report On The Tubbs Fire, As Well As PG&E's Statements In Its Recent 8-K Filings At The SEC, The Commission Should Hit The Pause Button And Urge PG&E To Do The Same.

In the last week, this has become a proceeding with a constantly evolving record, as parties and the Commission scramble to keep up with the latest development. The motion filed last Friday had a recent PG&E 8-K filing attached to it as the factual support for the requested relief. At the hearing conducted on Wednesday of this week, PG&E presented and relied upon two additional 8-K filings issued since the motion had been filed, one of which had apparently arrived at the Securities Exchange Commission (SEC) at 3:00 a.m. on the morning of the hearing.² Most recently, that is, literally a few hours before the Proposed Decision was issued yesterday, the California Department of Forestry and Fire Protection (CALFIRE) issued its report on the Tubbs Fire of 2017, with its determination that the fire was caused by a non-PG&E source.³ The CALFIRE report on the Tubbs fire is a material development that may be expected to lead to other developments (such as improvement in the utility's credit assessments and

¹ A nearly identical Proposed Decision was issued in A.18-10-003 on the same date. TURN has filed and served nearly identical comments in that proceeding as well.

² A.18-11-001 PHC Transcript, p. 44, lines 12-14.

³ <http://calfire.ca.gov/communications/downloads/newsreleases/2019/TubbsCause1v.pdf>.

reduction of its potential future liabilities faced). The Commission should take no action until those developments are known and analyzed.

PG&E's 8-K statement from January 14, 2019 (attached to its motion for exemptions) cites California Department of Insurance figures indicating \$17 billion of total wildfire claims from the 2017 and 2018 Northern California wildfires, of which \$10 billion relates to the 2017 wildfires.⁴ Based on property loss figures, approximately two-thirds of that \$10 billion is associated with the Tubbs Fire. Thus, there is a strong likelihood that CALFIRE's determination that PG&E is not at fault for the Tubbs Fire will have a material impact on PG&E's potential liabilities and financial condition. It will take some time for the market – and credit rating agencies – to fully react to this news and determine how it impacts PG&E's condition going forward. The Commission will have no meaningful opportunity to assess that impact until after it has seen how the market has responded; it certainly cannot be expected to adequately reflect that impact in a decision issued on the Monday following CALFIRE's report.

The more prudent and appropriate approach here is to: 1) hold off on making any decision on the need to grant exemptions to PG&E until the Commission has a clearer sense of the effect the Tubbs Fire report will have on PG&E's prospects going forward and 2) strongly encourage PG&E to hold off on any bankruptcy filing until the market has fully reacted to the Tubbs Fire finding and PG&E has reevaluated the need for a bankruptcy filing.

As will be described in the sections that follow, such an outcome is consistent with the record developed to date in this proceeding. PG&E's 8-K statement of January 14, 2019 indicates that the utility's current liquidity could be sufficient to permit it to continue operating for some time into the future without initiating bankruptcy or requiring debtor-in-possession

⁴ PG&E 8-K, January 14, 2019, p. 4.

financing at all. And PG&E's 8-K statement of January 22, 2019 states without qualification that PG&E has obtained necessary commitments for debtor-in-possession financing, even though the Commission had not yet acted on its exemption request. Thus, even before the Tubbs Fire report's issuance, the utility had failed to demonstrate the need for Commission action of any sort, much less expedited action taken before PG&E's threatened bankruptcy filing date. With CALFIRE's report, the Commission has that much more reason to put this proceeding on pause, and give itself more than a single hectic week to try to make sense of where things stand with regard to PG&E's financial condition.

II. The Proposed Decision Commits Factual Error In Accepting That Debtor-In-Possession Financing Is The Only Means By Which To Assure Continuing Utility Service To PG&E's Customers.

PG&E's January 14th 8-K statement states very clearly that the utility believes that if it were permitted to secure its debt with utility assets, it "could access, outside of a restructuring under Chapter 11, a significant amount of capital" such that "PG&E could extend its liquidity for an extended period of time."⁵ During the prehearing conference, counsel for PG&E presented a different position, asserting that without debtor-in-possession financing, the utility will not be able to continue to operate.⁶ The utility's prehearing conference argument ended on a similar note, contending that granting the requested exemptions is necessary so PG&E can obtain the funds needed to provide service after it has filed for Chapter 11 protection.⁷

⁵ PG&E Motion, Attachment A (January 14, 2019 8-K statement), p. 5.

⁶ Weissman, PG&E, A.18-11-001 PHC Transcript 22, ll. 11-13.

⁷ *Id.*, at 48, ll. 18-22.

The Proposed Decision appears to have accepted PG&E's prehearing conference version rather than the utility's statements in its SEC filing. It describes PG&E as having asserted that there is no alternative to debtor-in-possession financing, and from that finds:

Absent timely procurement of DIP financing, this Commission faces a substantial risk that the public health and safety of California will be severely impaired with potentially catastrophic results, if the provision of safe and reliable gas and electric service to the public, including but not limited to Californian's homes, hospitals and public facilities is compromised.⁸

Given the material that makes up the record in this proceeding, this finding constitutes factual error. As noted above, PG&E's 8-K filing of January 14, 2019 describes a non-bankruptcy alternative that would "extend its liquidity for an extended period of time" even without debtor-in-possession financing. Nothing in PG&E's presentation at the prehearing conference disputed or sought to disclaim its assertion in its SEC filing. If PG&E has non-bankruptcy alternatives it could pursue that would provide the funding necessary to continue providing gas and electric service to the public, there is not a sufficient factual basis for finding that debtor-in-possession financing is the only possible means of avoiding the "substantial risk" described in the PD.

TURN proposes the following modifications to Finding of Fact 3:

Absent sufficient liquidity, whether achieved outside of a restructuring under Chapter 11 or through ~~timely procurement of~~ DIP financing, this Commission faces a substantial risk that the public health and safety of California will be severely impaired with potentially catastrophic results, if the provision of safe and reliable gas and electric service to the public, including but not limited to Californian's homes, hospitals and public facilities is compromised.

⁸ Proposed Decision, p. 6; *see also* Finding of Fact 3.

III. The Commission Should Only Grant The Requested Exemptions With The Condition That PG&E NOT Initiate A Chapter 11 Proceeding In The Near Future.

Especially in light of the just-announced Tubbs Fire findings, TURN vigorously disputes PG&E's assertion that a bankruptcy filing is the only way for the company to be able to continue to provide adequate and safe service. The Proposed Decision says its grant of the requested approval is not intended to serve as an explicit or implicit approval of PG&E's decision to enter into bankruptcy.⁹ Given the developments that occurred so recently that they are not yet reflected in the Proposed Decision's analysis, the Commission should take its position one step further. It should strongly encourage PG&E to suspend its march toward bankruptcy at least until there has been sufficient opportunity to assess the full impact of the recent CALFIRE report on the utility's financial exposure and access to capital going forward.

The Commission can achieve such strong encouragement by authorizing PG&E's requested exemptions, conditioned upon the utility only using those exemptions outside of establishing debtor-in-possession financing. As indicated in the utility's 8-K statement of January 14, 2019, this ability to incur "secured indebtedness" outside of a restructuring under Chapter 11 would enable PG&E to access "a significant amount of capital" that "could extend its liquidity for an extended period of time."¹⁰ For purposes here, the Commission need only achieve an extension of liquidity for a relatively short period of time, that is, long enough to sufficiently assess and respond to any changes brought about by the January 24, 2019 CALFIRE report and any other recent developments that may have a similarly material impact on PG&E's condition. Rather than authorize PG&E to incur secured indebtedness as a means of enabling

⁹ Proposed Decision, p. 1.

¹⁰ PG&E Motion, Attachment A (January 14, 2019 8-K statement), p. 5.

PG&E's bankruptcy filing and the debtor-in-possession financing that will come with that action, the Commission should authorize such indebtedness as a means of forestalling such filing, at least temporarily.

TURN proposes the following modifications to Findings of Fact 4 and 5:

4. In the specific circumstances present here, it is in the public interest for PG&E to have authority pursuant to the Public Utilities Code to obtain capital and extend its liquidity by engaging in secured transactions not associated with DIP financing.

5. Authority to obtain ~~DIP~~ additional financing can best be provided in a timely manner by granting the exemptions requested, but with the condition that at this time PG&E may only use those exemptions outside of establishing DIP financing.

January 25, 2019

Respectfully submitted,

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Appendix A

Proposed Modifications to Findings of Fact and Conclusions of Law

Findings of Fact

3. Absent sufficient liquidity, whether achieved outside of a restructuring under Chapter 11 or through timely procurement of DIP financing, this Commission faces a substantial risk that the public health and safety of California will be severely impaired with potentially catastrophic results, if the provision of safe and reliable gas and electric service to the public, including but not limited to Californian's homes, hospitals and public facilities is compromised.
4. In the specific circumstances present here, it is in the public interest for PG&E to have authority pursuant to the Public Utilities Code to obtain capital and extend its liquidity by engaging in secured transactions not associated with DIP financing.
5. Authority to obtain ~~DIP~~ additional financing can best be provided in a timely manner by granting the exemptions requested, but with the condition that at this time PG&E may only use those exemptions outside of establishing DIP financing.